



INTERIOR BOARD OF INDIAN APPEALS

Anthony K. Blackmore, et al. v. Billings Area Director, Bureau of Indian Affairs

30 IBIA 235 (03/26/1997)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ANTHONY K. BLACKMORE <u>et al.</u> ,	:	Order Vacating Decision
Appellants	:	and Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 96-78-A
BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 26, 1997

This is an appeal from an April 26, 1996, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director, BIA), declining to award grazing leases to Anthony K. Blackmore for Allotments 542 and 543 on the Crow Reservation. In addition to Blackmore, appellants here include seven of the owners of Allotments 542 and 543: Gus Gardner, Alvina Old Crane Beartusk, Jeanette Lion Shows, Lanile Lion Shows, Birdie Lion Shows, Thomas Lion Shows, and Michael D. Bear Tusk. ^{1/} For the reasons discussed below, the Board vacates the Area Director's decision and remands this case to him for further proceedings.

Allotments 542 and 543 were included in Notice of Sale 95-2, an advertisement for farming and grazing leases issued by the Superintendent, Crow Agency, BIA, on April 20, 1995. Blackmore, who had leased both allotments during the previous leasing period, hid on both allotments. However, another bidder, Dave Vichery, submitted the high bids for both.

By two letters dated June 19, 1995, the Agency Realty Officer informed Vichery that he had been awarded leases for the two allotments; sent him the lease documents; and requested that he complete and return the documents within 10 working days from the date of the letter. Vichery did not respond. On January 24, 1996, the Superintendent wrote to Vichery, stating that, because he had not returned the lease forms within the required time, his bids would not be accepted; his bid deposits would be forfeited; and the leases would be awarded to the next highest bidder.

On the same day, i.e., January 24, 1996, the Superintendent wrote to Blackmore, offering him the leases at the rate of the highest bid, \$7.05 per acre. The Superintendent's letter stated: "Please complete the

^{1/} Blackmore states that the combined interests of these seven landowners total substantially more than 50 percent of the ownership of Allotments 542 and 543.

By the Board's calculations, which are based on Apr. 3, 1996, schedules of landowners included in the record, the interests of these seven landowners total approximately 43.7 percent of the ownership of each allotment.

enclosed lease and stipulation forms and return them to our office within 10 (ten) working days from the date of this letter along with the filing fee and applicable rental bonds."

Blackmore mailed the completed leases to the Agency, where they were apparently received on February 12, 1996. On February 15, 1996, the Superintendent wrote to Blackmore, stating:

You were given 10 (ten) days from the date of the [January 24, 1996,] letter, or until February 7, 1996, to return the documents for processing. On February 12, 1996, you returned the leases to the agency, however, the documents were filed past the deadline date established as February 7, 1996.

This is to inform you that since the required documents were not filed with our office within the required time frame, the filed lease contracts are not accepted. Further, you forfeit the bid deposit for each bid submitted for these items.

Also on February 15, 1996, the Superintendent wrote to Bernadette Smith, the third highest bidder for Allotment 542, and offered her a lease at the rate of \$7.05 per acre. Smith did not respond. On March 15, 1996, the Superintendent wrote to her, stating that she would not be awarded a lease and must forfeit her bid deposit.

On March 15, 1996, both the Superintendent and the Agency Realty Officer wrote to Tana Blackmore, Blackmore's sister, and offered her the two leases at \$7.05 per acre. Tana Blackmore had not bid on these leases at the lease sale but had written to the Superintendent on February 16, 1996, expressing interest in leasing the two allotments at \$7.05 per acre. Evidently, both leases were subsequently awarded to her.

On March 16, 1996, Blackmore appealed the Superintendent's February 15, 1996, letter declining to award the leases to him. In his Statement of Reasons before the Area Director, Blackmore contended:

Early this winter we were informed that our bonding Co was going to quit business. We were in the process of a new bond for some leases when I received an award of bid letter along w/ leases (above). The bonding (new) Co was moving slow & I called [an Agency Realty Specialist] prior to the 10 day return limit date & explained that I could not provide the bond w/ these leases as they had asked for. He asked if I wanted the leases. I said yes & he said OK just send the leases & follow with bond info as soon as they have it. I was trying to comply with their request and personally called to explain my situation. I complied verbally & said I would follow up by mail & I did. I was (by mail) 2 days late and verbally on time.

Blackmore's Apr. 8, 1996, Statement of Reasons before the Area Director at 1.

The Area Director issued a decision on April 26, 1996. 2/ He found that Blackmore was acquainted with leasing practices on the Crow Reservation and was, in any event, responsible for familiarizing himself with the relevant regulations. Further, he found that Blackmore had neither requested nor been granted an extension of time for submitting his completed leases but, at most, had been given permission to submit the leases without the bonds. Finally, he found that Blackmore had submitted the leases five days after the deadline. 3/ He therefore affirmed the Superintendent's decision.

In his appeal to the Board, Blackmore states:

I have been on the Crow Indian Reservation since 1957, and have operated a farming and ranching operation during those years. I have, as noted in the Area Director's letter, become familiar with the leasing process of [BIA]. In fact, this is one of the reasons that I have a problem with the view that I was not "timely" in filing my lease papers. A few years ago I bid on a lease of Crow Allotment #2151
* * *

A lease was sent to me which was in my possession for six months, whereupon, I, being reminded of the fact that it was not filed, proceeded to sign and bond the lease and submit it to [BIA] at Crow Agency, MT. It was approved by them and sent back to me, even though the time constraints of the advertisement were not complied with. The reason I was given that [BIA] could do that was the condition in the advertisement that the Superintendent could waive technical defects. This same wording appears in lease advertisement #95-2 dated April 20, 1995 * * *. [4/]

2/ In the pre-docketing notice for this appeal, the Board observed that the Area Director had issued his decision without allowing time for answer briefs under 25 C.F.R. § 2.11. Although noting that the Board has, on at least one occasion, vacated an Area Director's decision because it was issued prematurely (Scott v. Acting Aberdeen Area Director, 25 IBIA 115 (1994)), the Board determined that this appeal could proceed as long as interested parties were notified of the appeal and given an opportunity to participate.

Blackmore has served copies of his filings on the interested parties.

3/ Blackmore and the Area Director disagree concerning the number of days Blackmore's leases were late. Assuming the leases were required to be received at the Agency within the period stated, i.e., 10 working days, the Board calculates that the leases were three working days late.

4/ Notice of Sale 95-2 stated in part:

"All lease contracts will be prepared and forwarded to the successful bidder by personnel of the Crow Indian Agency. The executed contract must be returned within ten (10) days from the date of mailing. **In the event the lease is not completed and returned within the specified time, the lease**

While this is not the lease decision herein, I submit this in explanation of what had happened in the past, and point out that the Area Director, in his letter, indicated that I was aware of leasing practices.

As to the leases on appeal, I called the Realty Specialist in charge of office leases at [BIA] at Crow Agency, MT, and told him that the bonding company had not issued the bond yet. He told me not to worry about the 10 day time period for filing and that I should just get the bond. I suggested to him that I could bring the lease to his office and maintain the time constraints, but his response was that I should just mail the contract in. The result was that it arrived at Crow Agency, MT after the ten day period had expired.

Blackmore's Notice of Appeal and Statement of Reasons at 1-2. Blackmore also stated that he had spoken to some of the owners of Allotments 542 and 543, who stated that they wished to lease to him, rather than to his sister. Further, he contended that there was no authority to award a lease to his sister in the circumstances of this case.

Blackmore enclosed with his Notice of Appeal and Statement of Reasons letters from two of the landowners, Gus Gardner and Alvina Old Crane Beartusk. The letters stated, inter alia, that these two owners wished to join Blackmore in this appeal. 5/ The Board has therefore considered them appellants here.

After this appeal was docketed, Blackmore submitted similar letters signed by five other landowners, Jeanette Lion Shows, Lanile Lion Shows, Birdie Lion Shows, Thomas Lion Shows, and Michael D. Bear Tusk. The record does not indicate that the Area Director sent his April 26, 1996, decision to the landowners. If he did not, their time to appeal never began to run (see 25 C.F.R. § 2.7), and these landowners may now be deemed appellants, despite the apparent lateness of their appeal letters. In the absence of evidence that the Area Director sent copies of his decision to the landowners, the Board finds that these five landowners should be deemed appellants here.

fn. 4 (continued)

will be forfeited and may be offered to the next highest bidder at the rate of the highest bid.
TIME FRAMES WILL BE STRICTLY ENFORCED

* * * * *

"The Superintendent reserves the right to reject any and all bids and to waive strict formality or technical defects in the bids received whenever such rejection is in the interest of the Crow Tribe or the United States."

5/ The letters were actually addressed to the Superintendent but were dated May 20, 1996, after the Area Director issued his decision. Accordingly, the Board construed the statements about joining in Blackmore's appeal as referring to the present appeal.

The letters also requested that the Superintendent cancel the leases issued to Tana Blackmore, on the grounds that the Superintendent had no authority to issue the leases to her without readvertising them.

Blackmore appears to be contending that BIA should be estopped from rejecting his leases because of the statements he alleges were made to him by the Agency Realty Specialist. The Board rejects this contention. As a person seeking to lease trust land, Blackmore was responsible for complying with the rules governing leasing of that land and was not relieved of his responsibility by representations made to him by BIA employees. E.g., DuBray v. Acting Aberdeen Area Director, 30 IBIA 64 (1996), and cases cited therein. Further, Blackmore's two descriptions of the Realty Specialist's statement--one in his Statement of Reasons before the Area Director and the other in his Statement of Reasons before the Board--are not entirely consistent with each other. Thus, even if the Board were to take the Realty Specialist's statement into consideration here, it would find that Blackmore had not made a prima facie showing as to the content of that statement.

Blackmore also suggests that BIA's action in this case is inconsistent with its actions concerning prior leases awarded to Blackmore. Although Blackmore does not so argue, it is apparent from the record here that BIA has acted inconsistently in the way it has dealt with different prospective lessees in this case. When the high bidder, Vichery, failed to respond to the June 19, 1995, letters awarding the leases to him, the Agency took no action against him for nearly seven months. Then, even though Blackmore timely informed BIA by telephone that he intended to submit his lease documents and in fact submitted the documents shortly thereafter, BIA strictly enforced the 10-day time limit against him, rejecting his leases solely on the grounds of untimeliness. 6/ It did so even though the existing leases had expired on October 31, 1995, ostensibly making the issuance of new leases more urgent, and even though the rejection of Blackmore's leases would result in further delay in issuing new leases.

A BIA decision to approve or disapprove a lease is a decision based on the exercise of discretionary authority. E.g., Blackhawk v. Billings Area Director, 24 IBIA 275 (1993). The Board had limited authority to review BIA discretionary decisions. Nevertheless, it may review such a decision to ensure that all legal prerequisites to the exercise of discretion have been met, that there is a reasoned basis for the decision, and that the decision is supported by the record. E.g., Wallace v. Aberdeen Area Director, 26 IBIA 150 (1994).

In this case, the decisions issued by the Superintendent and the Area Director each state a reason for the decision, i.e., untimely return of lease documents, which, at least on its face, supports the decision. Under other circumstances, the Board might summarily affirm the Area Director's decision, based upon that reason. In this case, however, the record reflects what appears to have been grossly disparate treatment of Vichery and Blackmore. 7/ The failure to explain this disparity, coupled with the

6/ There is nothing in the record which suggests that BIA had any problem with Blackmore's performance under his earlier leases or that it had any reason, other than untimeliness, rejecting the leases at issue here.

7/ It is conceivable that, had Vichery submitted his lease documents shortly after his 10-day period had expired, BIA would have rejected them as untimely. As far as the record shows, however, Vichery was given an extremely long time in which to submit his documents.

ultimate issuance of leases to a lease applicant who had not participated in the lease sale, suggests the possibility that BIA may have had some other, unspoken, reason for rejecting Blackmore's lease documents.

If BIA rejected Blackmore's leases for reasons not communicated to him, the rejection would constitute an abuse of discretion and a violation of due process. Price v. Portland Area Director, 18 IBIA 272, 280 (1990). The Board does not conclude that there was in fact a hidden reason for the rejection of Blackmore's leases. It does hold, however, that, absent an explanation for the apparent disparity in the treatment of Vichery and Blackmore, the Area Director's decision is not supported by the record.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's April 26, 1996, decision is vacated, and this matter is remanded to him for further consideration. Unless there is a valid reason, other than untimeliness, for denying the leases to him, BIA should award the leases to Blackmore.

If the leases are awarded to Blackmore, the landowners' request to the Superintendent to cancel Tana Blackmore's leases will be moot. If BIA again determines not to award the leases to Blackmore, the Superintendent must render a decision on the landowners' request. 8/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

8/ The Superintendent was precluded from acting upon the landowners' request during the pendency of this appeal. E.g., Medallion Exploration v. Acting Phoenix Area Director, 28 IBIA 276 (1995), and cases cited therein.